

ESTTA Tracking number: **ESTTA367466**

Filing date: **09/09/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Tyson Foods, Inc.
Granted to Date of previous extension	09/15/2010
Address	2200 Don Tyson Parkway Springdale, AR 72762 UNITED STATES
Correspondence information	Tyson Foods, Inc. 2200 Don Tyson Parkway Springdale, AR 72762 UNITED STATES jenna.johnston@tyson.com Phone:479-290-4661

Applicant Information

Application No	77893758	Publication date	05/18/2010
Opposition Filing Date	09/09/2010	Opposition Period Ends	09/15/2010
Applicant	Everfresh Food Corporation 501 Huron Blvd SE MPLS, MN 55414 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Grain-based snack foods
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2822371	Application Date	09/12/2002
Registration Date	03/16/2004	Foreign Priority Date	NONE
Word Mark	CRISPITOS		

Design Mark	CRISPITOS
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1985/00/00 First Use In Commerce: 1985/00/00 Tortillas filled with [chicken and pizza sauce,] chicken and cheese, chicken and vegetables, or chicken and chili; tortillas filled with fruit

U.S. Application No.	85083721	Application Date	07/13/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CRISPITOS		
Design Mark	CRISPITOS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Tortillas filled with egg, pork and cheese		

Attachments	76450803#TMSN.gif (1 page)(bytes) 85083721#TMSN.jpeg (1 page)(bytes) Notice of Opposition-Crispitos.pdf (1 page)(52864 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/nathan hodne/
Name	Tyson Foods, Inc.
Date	09/09/2010

Tyson Foods, Inc. believes that it will be damaged by registration of the mark of United States Application Serial No. 77/893,758 ("USSN 77/893,758") by Everfresh Food Corporation in International Class 30 and hereby opposes the same. USSN 77/893,758 is for the mark "CRISPITOS" for grain-based snack foods. The grounds for opposition are as follows:

1. Tyson Foods, Inc. ("Opposer") is a Delaware corporation having a principal place of business at 2200 Don Tyson Parkway, Springdale, Arkansas 72762.

2. Upon information and belief, Everfresh Food Corporation ("Applicant") is a Minnesota corporation having a principal place of business at 501 Huron Street, SE, Minneapolis, Minnesota 55414.

3. Opposer has continuously used the mark "CRISPITOS" in association with tortillas filled with chicken and cheese, chicken and vegetables, and chicken and chili; and with fruit since as early as 1985. Opposer is the owner of United States Registration No. 2,822,371 for "CRISPITOS" that registered on March 16, 2004. This registration has not been cancelled or abandoned and this registration is valid and currently in full force and effect. In fact, United States Registration No. 2,822,371 is now incontestable. A copy of this registration is attached hereto as Exhibit A.

4. Opposer is also the owner of U.S. Application No. 85-083721 to register the mark "CRISPITOS" for tortillas filled with egg, pork and cheese. Opposer has continuously used the mark "CRISPITOS" in association with tortillas filled with egg, pork and cheese since as early as 2005. This application is still pending.

5. Opposer has expended great effort and considerable expense in advertising, promoting, offering for sale and selling its goods under the CRISPITOS mark in the United States. As a result, Opposer has developed valuable goodwill with respect to its CRISPITOS mark. Opposer's CRISPITOS mark has become widely and favorably known throughout the United States and has become recognized to consumers/customers as identifying and distinguishing Opposer as the source and origin of the associated goods bearing the CRISPITOS mark.

6. The goods listed in International Class 30 for the mark "CRISPITOS" are highly similar or related to the goods sold in association with Opposer's CRISPITOS mark. Applicant's CRISPITOS mark resembles Opposer's CRISPITOS mark as to be likely to be confused therewith and mistaken therefore. Applicant's CRISPITOS mark is deceptively the same as Opposer's CRISPITOS mark so as to cause confusion and lead to deception as to the origin of Applicant's goods associated with Applicant's "CRISPITOS" mark.

7. Opposer's first user of the CRISPITOS mark, as well as the date of registration for Opposer's above-identified federal registration is long prior to Applicant's filing of USSN 77/893,758 or any claimed first use of the "CRISPITOS" mark by Applicant. Thus, Opposer clearly has priority to the mark.

8. If Applicant is permitted to register and use the "CRISPITOS" mark for the goods in International Class 30, as specified in the application herein opposed, confusion in trade resulting in damage and injury to Opposer will be caused and will result by reason of the similarity between Applicant's mark and the CRISPITOS mark owned by Opposer. If Applicant is allowed to register the "CRISPITOS" mark, it will obtain statutory rights to the mark that will conflict with and substantially degrade Opposer's rights in United States Registration No. 2,822,371 as well as Opposer's superior common law rights to its CRISPITOS mark. Opposer's goodwill and reputation will be jeopardized by Applicant's registration of the "CRISPITOS" mark in International Class 30. Poor quality of the good by Applicant will greatly harm Opposer's reputation and translate to lost sales. Furthermore, Applicant will be unjustly enriched by its use of the "CRISPITOS" mark and will unfairly reap the benefit of Opposer's goodwill and reputation.

9. If Applicant is granted the registration herein opposed, it will thereby obtain at least a prima facie exclusive right to use of its mark. Such registration will be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that USSN 77/893,758 be rejected with respect to the goods specified in International Class 30 and that this Opposition be sustained and any other and further relief as is deemed just and proper.